

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

5:07-CT-3153-FL

ROGER BLAKENEY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	JOINT STATUS REPORT
)	
FRANK PERRY, Secretary of the North)	
Carolina Department of Public Safety;)	
and CARLTON JOYNER, Warden of)	
Central Prison, et al.,)	
)	
Defendants.)	

In reply to the Court's 21 August 2015 Order [D.E. 22] directing the parties to file a joint status report no later than 25 September 2015 describing what proceedings have taken place since the Court was last updated, and, specifically, when the parties anticipate that the state court litigation will be resolved, the parties have conferred and jointly submit the following report.

On 9 November 2014, the Plaintiffs in the state court litigation were given leave by the Wake County Superior Court to file a Second Consolidated Amended Complaint in the state-court action captioned *Robinson, et al. v. Perry, et al.* On 10 December 2014, the *Robinson* Plaintiffs filed a Second Consolidated Amended Complaint pursuant to 42 U.S.C. § 1983 and the North Carolina Declaratory Judgment Act, N.C.G.S. §§ 1-253 through 1-267 and raising six claims for relief. On 9 January 2015, the Defendants in *Robinson* removed the Second Consolidated Amended Complaint to this Court. *See* D.E. 1, *Robinson, et al. v. Perry, et al.*, 5:15-CT-3008-D. On 9 February 2015, Plaintiffs moved to remand the action back to Wake County Superior Court on the grounds that Defendants had untimely initiated removal and, alternatively, asked the Court to remand various state law claims back to state court. *See* D.E. 15

and 16, *Robinson, et al. v. Perry, et al.*, 5:15-CT-3008-D. On 27 February 2015, Defendants filed a response to the motion to remand. *See* D.E. 19, *Robinson, et al. v. Perry, et al.*, 5:15-CT-3008-D. On 25 June 2015, the Court granted Plaintiffs' motion to remand the action back to the Wake County Superior Court in its entirety. *See* D.E. 23, *Robinson, et al. v. Perry, et al.*, 5:15-CT-3008-D.

In state court, the parties continue to anticipate that any non-facial constitutional challenges will be heard by the presiding superior court judge, and any facial constitutional challenges to North Carolina statutes, which were predicated exclusively upon the North Carolina Constitution and North Carolina law, will be resolved separately under three-judge panel procedures recently adopted by the North Carolina General Assembly. *See* S.L. 2014-100, § 18B.16.

With regard to the Racial Justice Act (RJA), it remains the case that the Plaintiffs in this suit have motions pending in state court pursuant to both the original version of the RJA, S.L. 2009-464, as well as the amended version, S.L. 2012-136. Plaintiffs continue to anticipate that the next stage in their RJA cases will involve litigation over the question of whether the repeal bill, S.L. 2013-154, § 5, may be retroactively applied to death row inmates who investigated and properly filed RJA motions. There remain pending before the North Carolina Supreme Court two cases which are expected to address questions of law under the RJA. Both cases were argued before the court on April 14, 2014 and are ripe for decision. *See State v. Marcus Robinson*, No. 411A94-5; *State v. Augustine, Golphin, and Walters*, No. 139PA13. The parties do not know when litigation of Plaintiffs' RJA motions will conclude.

The parties do not expect any execution dates to be set for Plaintiffs until after the resolution of RJA litigation and the conclusion of any pending litigation regarding lethal

injection either in state court or this case. Accordingly, subject to the Court's approval, the parties agree that it is appropriate for these proceedings to remain in abeyance.

Respectfully submitted this the 21st day of September, 2015.

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CERTIFICATE OF SERVICE

I certify that, on 21 September 2015, I electronically filed the foregoing Joint Status Report with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to the counsel of record for the Defendants, the N.C. Department of Justice, Special Deputy Attorney General Joseph Finarelli, at jfinarelli@ncdoj.gov.

This the 21st day of September, 2015.

/s/ David Weiss
David Weiss
Counsel for Plaintiffs